IN THE HIGH COURT OF DELHI AT NEW DELHI

CRP No.131/2005

GNB Bros. Pvt. Ltd. ..... Petitioner
! through: Mr. Anil Goel, Advocate

VERSUS

$ Sudhir Gensets Ltd. ..... Respondents
^ through: Mr. Jayant Mehta, Advocate with
Mr. Manish Kumar, Advocate

% **D**ATE OF DECISION: 28-05-2007

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. A short issue arises for consideration in the present petition. The issue predicates itself on the scope and interpretation of Section 8 of the Arbitration and Conciliation Act, 1996. The provision of law reads as under :-

> "**8. Power to refer parties to arbitration where there is an arbitration agreement.-**(1) A judicial authority before which an action is brought in an matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

2. The phrase '*not later than when submitting his first statement on the substance of the dispute*', in Sub-Section 1 of Section 8 needs to be interpreted.

3. A brief backdrop of the relevant facts would be necessary to appreciate the contours of the legal debate by learned counsel for the parties.

4. Petitioner filed a suit for recovery of Rs.5,02,200/-. The suit sought damages. The origin of the dispute was a jural relationship between the parties pursuant to a written contract.

5. Respondent was served with summons in the suit returnable for 4.1.2001. It sought for and was granted time to file a written statement. After adequate opportunities were granted for filing a written statement and noting that the patience of the court ran down, on 17.2.2003, i.e. after successfully delaying trial of the suit for over 2 years, respondent was visited with the penalty of closure of its statement of defence i.e. right to file written statement was closed. Petitioner was called upon to

lead its evidence. Matter lingered on till 2.4.2004. On said date, an application was filed by the respondent under Section 8 of the Arbitration and Conciliation Act, 1996.

6. Petitioner opposed the application as not maintainable. Petitioner stated that having obtained adequate opportunities for filing the written statement; none being filed; resulting in right to file written statement being closed, led to the inevitable consequence that the first statement on the substance of the dispute would be deemed as having closed resulting in extinguishing the right to invoke Section 8.

7. Respondent contended on the other hand that there being no limitation prescribed for filing an application under Section 8; notwithstanding that it was served on 4.1.2001 and suffered a penal order of right to file written statement being closed on 17.2.2003, it had a right to file the application. It was pleaded by the respondent that as long as the first statement on the substance of the dispute is not filed, whatsoever may be the span of time consumed, application under Section 8 could be filed.

8. Learned Trial Judge has held that the principles under Section 34 of the Arbitration Act, 1940 were not imported in Section 8 of the Arbitration and Conciliation Act, 1996. Learned

Trial Judge has held that the decisions under the Arbitration Act, 1940 which foreclosed the right to file an application under Section 34 thereof on a defendant participating in the proceedings by seeking time for filing a written statement were inappropriate for adjudicating an application under Section 8 of the Arbitration and Conciliation Act, 1996.

9. Learned Trial Judge has opined that the use of the word 'shall' in Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996 renders the said statutory provision as a mandatory provision. Learned Trial Judge has held that the moment it is shown to the court that there exists an arbitration clause between the parties and that the subject matter of the dispute brought before the court is an arbitrable dispute, parties have to be referred to arbitration.

10. Learned counsel for the respondent urges that if contention of learned counsel for the petitioner were to be accepted, the expression '*not later than when submitting his first statement on the substance of the dispute*' would have to be re-read as '*not later than when or when time has lapsed for submitting his first statement on the substance of the dispute*.'

11. Counsel urges that this would be impermissible for the reason this would require insertion of the 6 words '*or when time*

has lapsed for' in Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996.

12. The argument of the learned counsel for the respondent may appear attractive at the first blush, if one were to hold that a courts cannot legislate. But the sheen is lost from the argument if one considers the expression in the context in which Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996, stands enacted. Particularly keeping in view the underlying philosophy of Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996.

13. It is settled law that where no time is prescribed for doing of an act, performance of the act cannot be postponed indefinitely and it has to be performed within a reasonable period of time. Alternatively, if no other provision of the Limitation Act 1963 is attracted, Article 137 of the Limitation Act 1963 which provides for a limitation of 3 years would be attracted. Thus in any case, an application under Section 8 of the Arbitration and Conciliation Act, 1996 which is filed beyond a period of 3 years when right to file the application accrues would be barred by the Statute.

14. As noted above, respondent was served for 4.1.2001. Reckoned with effect from said date 3 years would expire on 4.1.2004. As noted above, the application in question was filed on

2.4.2004.

15. But, I have more fundamental reasons to hold that notwithstanding Article 137 of the Limitation Act, an application invoking remedy under Section 8 of the Arbitration and Conciliation Act, 1996 cannot be postponed beyond a reasonable period.

16. The reason is that where the party brings a civil suit and the opposite party seeks resolution of the dispute through the medium of arbitration,it must do so with utmost dispatch. The legislative intent is to have the application filed at the earliest, meaning thereby, before submitting the first statement on the substance of the dispute. No doubt, the language of Section 8 of the Arbitration and Conciliation Act, 1996 is materially different than the language of Section 34 of the Arbitration Act, 1940, but the underlying principle of both enactments, namely, promptness in invoking the right exists.

17. Where a party seeks repeated opportunities for filing a written statement and files none and right to file a written statement is foreclosed, inevitable consequence would be a deemed legal fiction. The deemed legal fiction would be that the right to file the written statement being closed would result in foreclosure of any right to predicate an application under Section

8 which requires invocation of the right before submitting the first statement on the substance of the dispute.

18. Thus, I need not re-interpret and rephrase Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996 and need not introduce the words '*or when time has lapsed for*' in Sub-Section 1 of Section 8 of the Arbitration and Conciliation Act, 1996.

19. As it is said, the life of law is not logic but experience. Statutes have to be interpreted purposively and to give effect to the legislative intent and not in derogation thereof.

20. The petition accordingly stands disposed of quashing the impugned order dated 6.10.2004 passed by Shri V.K.Yadav, ADJ, Delhi and as a consequence thereof, I dismiss the respondent's application under Section 8 of the Arbitration and Conciliation Act, 1996. Suit filed by the petitioner is restored.

21. Parties are directed to appear before the learned Trial Judge on 9.7.2007. On a formal application being filed by the petitioner and copy of the present order shown, suit would be restored and adjudicated as per law.

22. Costs of Rs.10,000/- is imposed on the respondent and in favour of the petitioner.

23. Copy of this order be supplied dasti to counsel for the parties

on payment of usual charges.

May 28, 2007 **PRADEEP NANDRAJOG, J.**
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